

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY S. JOHNSON and DEPARTMENT OF AGRICULTURE,
AGRICULTURAL STATISTICS OFFICE, Lincoln, Nebr.

*Docket No. 97-1199; Submitted on the Record;
Issued June 18, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant met his burden of proof to establish that he sustained a left shoulder condition in the performance of duty.

On September 12, 1994 appellant, a 42-year-old duplicating and mail processing equipment operator, filed an occupational disease claim based on pain in his left shoulder due to repetitive activities, such as sorting letters and passing papers. Appellant stated that his pain radiated into his left elbow and that his condition commenced on May 18, 1994.

Appellant submitted a September 6, 1994 letter from Scott Gleim, a physical therapist, who submitted a report cosigned by Dr. William Bailey, a Board-certified family practitioner and appellant's treating physician. The report stated that appellant had been treated at Mutual of Omaha Health Plans since May 18, 1994 for complaints of left elbow pain. The report diagnosed chronic left lateral epicondylitis and advised that, according to appellant's description of his job; *i.e.*, lifting, twisting, turning and grasping, the condition was aggravated if not caused by his work activities.

Appellant's diagnosis of left lateral epicondylitis was confirmed by a November 3, 1994 report from Dr. William F. Garvin, a Board-certified orthopedic surgeon, who stated that appellant's condition was related to chronic and repetitive trauma to the left elbow due to lifting, twisting, turning and grasping in his work.

The Office of Workers' Compensation Programs accepted appellant's claim for left lateral epicondylitis by letter dated November 16, 1994. The Office authorized surgery for appellant's left elbow on October 13, 1994. Appellant returned to part-time limited duty on January 23, 1995 and returned to full-time duty on March 13, 1995.

On January 19, 1996 appellant filed a recurrence of disability claim. Appellant attached a handwritten statement, as follows:

“When I first returned to work, my elbow was the only thing that I was concerned about and I put more weight on my upper arm to prevent use of my elbow. I had returned to the doctor for several checkups and continued attending physical therapy working some hours in the arm attending therapy. During that time I had increased my hours working. I started having a pain in my shoulder which the therapist tried to help me with. We had no idea why the pain started. The pain has grown and I had some trouble sleeping.”

Appellant stated that he returned to Dr. Garvin, who advised him to avoid doing work which involved use of his left arm. Appellant stated that he returned to work and informed his supervisor of his shoulder problem.

The employing establishment responded to appellant’s statement, indicating that it was not aware of when or how appellant allegedly injured his shoulder. It noted that appellant participated in activities such as farming and bowling and that there were conflicting statements concerning his shoulder condition.

In a report dated October 27, 1995, Mr. Gleim, appellant’s physical therapist, noted that appellant had problems with his left shoulder for over a year. He noted that appellant was examined on October 26, 1995 with continued left shoulder pain, at times severe, but that appellant claimed that he continued to work because he apparently had used up all of his sick leave. Mr. Gleim indicated that appellant had been seen on June 7, 1995 by Dr. Garvin. He stated that appellant underwent a magnetic resonance imaging (MRI) scan which showed arthritic changes at the acromioclavicular joint with some degree of impingement onto the rotator cuff but a definite tear was not seen.

Appellant was seen by Dr. Matthew C. Reckmeyer, a Board-certified orthopedic surgeon, for a second opinion regarding his left shoulder condition. In a report dated August 4, 1995, he advised that appellant developed problems with his left shoulder over the course of the prior three months. Dr. Reckmeyer stated that appellant had not sustained a specific injury but associated it with activities including lifting, along with his work he has had pain in the shoulder which had been bothering him, giving difficulty with discomfort at night as well as during the working day, which appellant described as moderate to severe. He diagnosed rotator cuff tendinitis, a probable tear, in his left shoulder.

By letter dated February 8, 1996, the Office advised appellant that, based on the assertions he made in the statement attached to his recurrence of disability claim, he was actually claiming a consequential injury. The Office requested medical evidence and a description of his farming activities and hobbies.

In response, appellant submitted treatment notes dated May 1 and June 7, 1995 from Dr. Garvin, and a June 1, 1995 treatment note from Dr. Bailey which indicated he had been treated for his shoulder condition for several months. In a January 17, 1996 treatment note, Dr. Garvin indicated that appellant had been examined that day and was planning to proceed

with surgery on his left shoulder on January 24, 1996. He noted that appellant continued to experience pain in and about the left shoulder area, which seemed to be worse when he performed activities which required movement to the shoulders such as sorting mail. Dr. Garvin related that appellant at times noted some sense of catching as he moved his shoulder in certain positions and that the pain was bothersome at night, causing him to only get a few hours of sleep at a time. The record reveals that appellant underwent surgery on his left shoulder on January 24, 1996.

By decision dated April 9, 1996, the Office denied appellant's claim, finding that his left shoulder condition was not causally related to his accepted left elbow condition or surgery. The Office noted that physical therapy treatment notes had indicated, as early as October 5, 1993, evaluation of both shoulders with a diagnosis of rotator cuff tendinitis. The Office found that appellant had not demonstrated that his left shoulder condition was due to the work duties he performed after his return following his elbow surgery.

In a letter dated December 17, 1996, appellant's representative requested reconsideration of the April 9, 1996 Office decision. The representative noted that the medical record established appellant had been complaining of left arm and shoulder problems as early as 1993. The representative explained that appellant was legally deaf and had experienced some difficulty explaining his medical complaints to his doctors. The representative stated:

"It is appellant's position that although there was some pain and problems with his left shoulder prior to his elbow surgery, the left shoulder did not become symptomatic to the point of needing additional medical treatment until after he had surgery on the left elbow, which is why he associated the left shoulder problem with the left elbow surgery."

Appellant submitted a November 22, 1996 report from Dr. Garvin, who stated that he had treated appellant since July 7, 1993 for a complaint of pain with his left shoulder. He stated that appellant's shoulder condition had appeared to subside due to an exercise and therapy program until he examined him on June 7, 1995, when he experienced increasing difficulty with the left shoulder. Dr. Garvin advised that appellant was having significant impingement findings in June 1995 and was referred for an MRI scan, which was consistent with impingement but no full thickness tear of his left rotator cuff. He stated that, in view of appellant's continued left shoulder symptoms, surgery was performed on January 24, 1996 for subacromial decompression with excision of the distal clavicle and an anterior acromioplasty. Dr. Garvin advised that, at the time of his last evaluation of appellant in July 1996, he was returned back to full-duty work. With regard to causation, Dr. Garvin stated:

"[Appellant] related that he was required to do a significant amount of movement with both upper extremities in the course of his work. While much of this movement was not overhead lifting, it was repetitive in nature and required him to rotate his shoulders to a significant degree throughout the workday. It is my opinion that the condition for which I saw [appellant] in 1993 and also in 1995 was a continuum of the same problem. He was known to have spurs on the inferior aspect of the clavicle as well as the acromion at the time of surgery. As is true with so many degenerative conditions, multiple factors come into play

relative to causation. The fact that [appellant] had to use his hands and arms at work as well as at home and in his avocations would be contributing factors to the degenerative process. There may also be some hereditary predispositions, namely the width of the acromioclavicular joint and the type of anatomical configuration of the acromion, which can also contribute to development of impingement problems in a shoulder. I can also state with a reasonable degree of medical certainty that his work pattern was an aggravating factor in his diagnosed condition of impingement syndrome of the left shoulder.”

In a January 24, 1997 decision, the Office denied modification of its April 9, 1996 decision.

The Board finds that this case is not in posture for decision.

In the present case, the Office accepted that appellant sustained left elbow lateral epicondylitis due to factors of his federal employment. Appellant received appropriate compensation benefits and authorization for surgery, which was performed on October 13, 1994. Following surgery, appellant returned to limited-duty work on January 23, 1995 which was increased to full-time duty on March 13, 1995. On January 22, 1996 appellant filed a notice of recurrence of disability, indicating in an attached statement that he had experienced increasing pain in his left shoulder since his return to duty. He did not stop work. Appellant contends that his left shoulder condition was caused or aggravated by factors of his federal employment.

In support of his claim, appellant submitted reports from Dr. Garvin who indicated that appellant had experienced continuing problems with his left shoulder since July 1993 and had returned for further treatment in June 1995 when the problem had exacerbated. Treatment culminated in shoulder surgery on January 24, 1996. Dr. Garvin stated with a reasonable degree of medical certainty that appellant’s work duties constituted an aggravating factor in his diagnosed condition of impingement syndrome of the left shoulder. In addition, he specifically described the employment factors which he believed contributed to or aggravated appellant’s left shoulder condition, stating that these involved a significant amount of movement with both upper extremities in the course of his work, was repetitive in nature and required him to rotate his shoulders to a significant degree throughout the workday. Although Dr. Garvin conceded that there were other factors regarding causation, including the fact that appellant used his hands and arms in his farming and hobby activities and that appellant had some hereditary factors which may have contributed to the development of an impingement problem, he unequivocally stated that appellant’s employment duties caused an aggravation of this left shoulder condition which necessitated surgery. The record also contains the August 4, 1995 report of Dr. Reckmeyer, who indicated that appellant had developed problems with his left shoulder due to activities, including work, which had resulted in moderate to severe discomfort and which he diagnosed as rotator cuff tendinitis of the left shoulder.

Although the medical evidence submitted by appellant is not sufficient to meet his burden of proof of establishing that his left shoulder condition is causally related to factors of his federal employment, the medical evidence of record raises an uncontroverted inference of causal relationship between appellant’s employment duties and the development of his shoulder condition. Given the absence of any opposing medical evidence, the record is sufficient to

require further development of the claim.¹ On remand, the Office should further develop the medical evidence as to the relationship between appellant's left shoulder condition and the need for surgery with the factors of his federal employment. The Office should prepare a statement of accepted facts which describes the physical requirement of appellant's work duties together with his nonemployment farming and sporting activities. After such further development as the Office deems necessary, it should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated January 24, 1997 is set aside and the case is remanded for further action in accordance with this decision.

Dated, Washington, D.C.
June 18, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹ *John J. Carlone*, 41 ECAB 354 (1989).